IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO. 424 **OF** 2003

IN

SUIT NO.321 OF 1999

Abdul Aziz Hasan .. Plaintiff

versus

Bilal Ahmed Shadab .. Defendant

...

Mr. N.Dinkar Rao for Plaintiff.

CORAM : D.G. KARNIK, J

DATED : 3rd February, 2005.

P.C:-

1. This motion has been taken out for a decree against the defendant in the sum of Rs.74,000/- under order 12 Rule 6 of the Code of Civil Procedure. The plaintiff has filed the suit for recovery of a sum of Rs.2,00,000/- as the principal sum and Rs.24,000/- as and by way of interest. While applying for leave to defend the defendant contended that there was no agreement to pay interest and that he paid a sum of Rs.1,16,000/- to the plaintiff. He further contended

that only a sum of Rs.74,000/- was due and payable to the plaintiff. By an order passed in Summons for Judgment No.264 of 1999 this Court granted unconditional leave to defend the suit but in view of his admission observed in para 5 of the order which is as follows :

> " The defendant however is free to make payment by instalments towards the admitted claim of Rs.74,000/- and the plaintiff shall accept the same without prejudice to his rights and contentions."

2. Thereafter the defendant has filed the written statement on 17th March 2003 and in para 11 of the written statement has admitted that a sum of Rs.74,000/- is due and payable by him to the plaintiff. He has further expressed his willingness to pay the sum by monthly instalments of Rs.1500/-. In para 16 of the written statement he has reiterated that he is willing to pay Rs.74,000/- by monthly instalments of Rs.1500/-. Thus there is a clear admission by the defendant that the sum of Rs.74,000/- is still due and payable by him. As regards instalments normally evidence would be required to be

adduced to find out as to whether the defendant is entitled to instalments and the plaintiff would be entitled to a decree for recovery forthwith without facility of instalments. However, learned counsel for the plaintiff states that the plaintiff is willing to accept Rs.74,000/- by instalments of Rs.1500/- as prayed for by the defendant. In view of the specific admission of the defendant that the sum of Rs.74,000/- is due and payable by him and further admission that he is willing to pay the said sum by monthly instalments of Rs.1500/- the plaintiff would be entitled to a decree on admission under Order 12 Rule 6 of the Code of Civil Procedure. Hence, I pass the following order:

> " The defendant shall pay to the plaintiff a sum of Rs.74,000/. The defendant is granted facility of paying this sum by monthly instalments of Rs.1500/-. First of such instalments shall be paid on 10th March, 2005 and each of the subsequent instalments of Rs.1500/- shall be paid by the 10th of each British Calendar month.

. Motion is disposed of accordingly.

D.G.KARNIK, J